

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JOE F. BOEHMS,

Plaintiff,

v.

NO. 1:94CV21-S-D

CRAVEN CROWELL, et al.,

Defendants.

OPINION

In this case, the plaintiff, Joe Boehms, a long-time employee of the Tennessee Vally Authority (TVA), alleges that he was not hired as a customer service manager at either Columbia, Tennessee, or Tupelo, Mississippi, because of his sex and age, respectively. At the time the decisions were made for these two positions, Boehms, a man in his fifties, was a TVA district manager in Tupelo, a position he had held since TVA's reorganization in 1988. The Columbia position was awarded to a female in her fifties; the Tupelo position, to a man in his thirties. Presently before the court are defendants' motions to dismiss, for summary judgment, and to strike and plaintiff's motion for Rule 11 sanctions.

On a motion for summary judgment in an employment discrimination case, the court

must assess whether [plaintiff] tendered factual evidence that would lead a jury to reasonably conclude that [defendants'] reasons are a pretext for...discrimination....[B]ecause [plaintiff] would be required to prove at trial, through a preponderance of the evidence, that [defendants'] proffered reasons are a pretext for...discrimination, he must now produce sufficient evidence to establish that [defendants']

reasons were pretexts for...discrimination.

Bodenheimer v. PPG Industries, Inc., 5 F.3d 955, 958 (5th Cir. 1993) (emphasis in original). "St. Mary's [Honor Center v. Hicks, ___ U.S. ___, 113 S.Ct. 2742, 125 L.Ed. 2d 407 (1993)] requires more of the plaintiff than simply negating the employer's defense....[A] court considering summary judgment must decide whether plaintiff's facts, if believed, would prove that, more likely than not, the employer [refused to hire] the employee because of his age [or sex]." Bodenheimer, 5 F.3d at 959 n.8.

Having carefully reviewed the extensive record in this case, the court is of the opinion that plaintiff has presented insufficient evidence to support the sex discrimination claim. Even if all of plaintiff's evidence is taken as true (as it must be) that defendants conspired to prevent plaintiff from submitting a resume and therefore from being considered for the Columbia position, he has, at most, shown that defendants' proffered reason for refusing to hire him is false. This is simply insufficient, for he must prove not only that defendants' proffered explanation was false but also that discrimination lay at the heart of defendants' decision. To survive summary judgment, plaintiff, of course, need only raise a genuine issue of material fact on this point, which, in this court's opinion, plaintiff has failed to do on the sex discrimination charge. That claim is therefore dismissed with prejudice.

The court reaches a contrary conclusion, however, as to the age discrimination claim and finds that plaintiff has presented evidence sufficiently raising genuine issues of material fact on

that claim (e.g., questions which could reasonably be construed as age-related were asked of candidates seeking the position of customer service manager and no one over the age of forty-five was hired for that position), and defendants are not entitled to judgment as a matter of law. Defendants' legal position as to the sufficiency of the complaint and the significance of the attachment of the administrative decision which is advanced in their motion to dismiss, though tenuous and certainly not well taken, does not implicate Rule 11, as plaintiff suggests.

Finally, the court is of the opinion that defendants' motion to strike plaintiff's jury demand and his request for liquidated damages is well taken. (Plaintiff conceded his request for compensatory and punitive damages.) In Lehman v. Nakshian, 453 U.S. 156, 165 (1981), the Supreme Court held that there is no "right to trial by jury [for] ADEA plaintiffs proceeding against the Federal Government." Plaintiff attempts to avoid this holding by arguing that because TVA can "sue and be sued in its corporate name," 16 U.S.C. § 831c(b), it "is subject to suit and the incidents of suit...." Defendants acknowledge that Congress has specifically waived the sovereign immunity of the United States with respect to suits brought against government corporations, such as TVA, for age discrimination, see 29 U.S.C. 633a(a) ("All personnel actions affecting employees...who are at least 40 years of age...in executive agencies...shall be made free from any discrimination based on age"); 5 U.S.C. 105 (including "government corporations" within definition of "executive agency"); 16 U.S.C. § 831 (creating "a body corporate by the name of the 'Tennessee

Valley Authority'"), but argue that this waiver does not include the right to jury trial. The court agrees with defendants' position and believes Lehman is clear on this point. Plaintiff's request for a jury trial on the age discrimination claim is hereby stricken. Plaintiff's request for liquidated damages is also stricken pursuant to Smith v. Office of Personnel Management, 778 F.2d 258, 263-64 (5th Cir. 1985), which held that liquidated damages are not recoverable by a federal employee seeking redress under the ADEA. Defendants' motion to strike is therefore granted in its entirety.

CONCLUSION

Having carefully reviewed the record, the court finds that (1) defendants' motion to dismiss is not well taken and is denied, (2) their motion for summary judgment is granted in part, as to the sex discrimination claim, but is denied in part, as to the age discrimination claim, (3) their motion to strike jury demand and plaintiff's request for liquidated damages is well taken and is granted, and (4) plaintiff's motion for Rule 11 sanctions is not well taken and is denied.

An appropriate order shall issue.

This _____ day of _____, 1995.

CHIEF JUDGE